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8
9 **UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

10 Line One Laboratories Inc. (USA), a
11 California corporation,

12 Plaintiff,

13 v.

14 Wingpow International Limited, a private
15 limited company organized in the United
Kingdom; Gary Ayckbourn, an individual;
16 Mark James Ayckbourn, an individual;
and DOES 1-10, inclusive,

17 Defendants.

18
19 And Related Counterclaims.
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Case No. 2:22-cv-02401-FMO

**ANSWER TO SECOND AMENDED
COMPLAINT BY DEFENDANT
AND COUNTERCLAIMANT
WINGPOW INTERNATIONAL
LIMITED**

DEMAND FOR JURY TRIAL

SAC filed: November 17, 2022

Hon. Fernando M. Olguin

1 Defendant Wingpow International Limited (“WPIL” or “Defendant”) hereby
2 answers¹ the Second Amended Complaint (“SAC”) of Plaintiff Line One Laboratories
3 Inc. (“Plaintiff” or “LOL”) as follows:

4 **THE PARTIES**

5 1. Defendant is without knowledge or information sufficient to form a belief
6 as to the truth of the allegations contained in Paragraph 1 of the Second Amended
7 Complaint and therefore denies those allegations.

8 2. In response to Paragraph 2 of the Second Amended Complaint, Defendant
9 states that WPIL is a private limited company organized under the laws of the United
10 Kingdom with a registered office address in Witney, Oxfordshire, England. Defendant
11 denies the remaining allegations in Paragraph 2 of the Second Amended Complaint.

12 3. In response to Paragraph 3 of the Second Amended Complaint, Defendant
13 states that Gary Ayckbourn is a British citizen domiciled in the United Kingdom.
14 Defendant denies the remaining allegations in Paragraph 3 of the Second Amended
15 Complaint.

16 4. In response to Paragraph 4 of the Second Amended Complaint, Defendant
17 states that Mark James Ayckbourn is a British citizen domiciled in the United Kingdom.
18 Defendant denies the remaining allegations in Paragraph 4 of the Second Amended
19 Complaint.

20 5. Defendant is without knowledge or information sufficient to form a belief
21 as to the truth of the allegations contained in Paragraph 5 of the Second Amended
22 Complaint and therefore denies those allegations.

23 6. In response to Paragraph 6 of the Second Amended Complaint, Defendant
24 states that Gary Ayckbourn is a director and Secretary of WPIL. Defendant denies the
25 remaining allegations in Paragraph 6 of the Second Amended Complaint.

26 _____
27 ¹ WPIL expressly does not abandon its already-pleaded First Amended Counterclaim
28 [Dkt. No. 50] nor any of the claims asserted therein, all of which remain pending and all
of which WPIL shall pursue at trial.

1 7. In response to Paragraph 7 of the Second Amended Complaint, Defendant
2 states that Mark James Ayckbourn is a director of WPIL. Defendant denies the
3 remaining allegations in Paragraph 7 of the Second Amended Complaint.

4 8. In response to Paragraph 8 of the Second Amended Complaint, Defendant
5 admits that Gary Ayckbourn and Mark James Ayckbourn, among others, are principals
6 of WPIL and contribute to business decisions made on WPIL's behalf. Defendant also
7 admits and states that WPIL and LOL maintained a years-long business relationship
8 until that relationship was unilaterally and wrongfully breached by LOL. Defendant
9 denies the remaining allegations in Paragraph 8 of the Second Amended Complaint,
10 including that WPIL is a predecessor-in-interest to LOL.

11 9. Defendant is without knowledge or information sufficient to form a belief
12 as to the truth of the allegations contained in Paragraph 9 of the Second Amended
13 Complaint and therefore denies those allegations.

14 10. Defendant states that the allegations in Paragraph 10 of the Second
15 Amended Complaint are merely legal conclusions that do not necessitate a response. To
16 the extent any response is necessary, Defendant denies the allegations in Paragraph 10 of
17 the Second Amended Complaint.

18 11. Defendant states that the allegations in Paragraph 11 of the Second
19 Amended Complaint are merely legal conclusions that do not necessitate a response. To
20 the extent any response is necessary, Defendant denies the allegations in Paragraph 11 of
21 the Second Amended Complaint.

22 12. Defendant states that the allegations in Paragraph 12 of the Second
23 Amended Complaint are merely legal conclusions that do not necessitate a response. To
24 the extent any response is necessary, Defendant denies the allegations in Paragraph 12 of
25 the Second Amended Complaint.

26 13. Defendant states that the allegations in Paragraph 13 of the Second
27 Amended Complaint are merely legal conclusions that do not necessitate a response. To
28

1 the extent any response is necessary, Defendant denies the allegations in Paragraph 13 of
2 the Second Amended Complaint.

3 **JURISDICTION AND VENUE**

4 14. Defendant admits the allegations in Paragraph 14 of the Second Amended
5 Complaint.

6 15. Defendant denies the allegations in Paragraph 15 of the Second Amended
7 Complaint.

8 16. The allegations in Paragraph 16 of the Second Amended Complaint and
9 subparagraphs (a) through (x) thereof are not directed toward WPIL and, thus, no
10 response from WPIL is required. To the extent any response is required of WPIL,
11 Defendant denies the allegations in Paragraph 16, including each and every allegation in
12 subparagraphs (a) through (x).

13 17. Defendant denies the allegations in Paragraph 17 of the Second Amended
14 Complaint.

15 **BACKGROUND FACTS**

16 18. Defendant is without knowledge or information sufficient to form a belief
17 as to the truth of the allegations contained in Paragraph 18 of the Second Amended
18 Complaint and therefore denies those allegations.

19 19. In response to the allegations in Paragraph 19 of the Second Amended
20 Complaint, Defendant states as follows: Since 2006, WPIL, in conjunction with LOL,
21 has been an international seller of sexual health products. WPIL is responsible for all
22 administrative, design, marketing, and customer-facing aspects of the business,
23 including maintaining accounts and bookkeeping with customers, negotiating contracts
24 and trading terms, and resolving disputes. The parties' generally-established course of
25 dealings is as follows: Upon receipt of a purchase order from a customer, WPIL sends
26 the purchase order to LOL via its wholly-owned factory in China, which confirms
27 receipt, orders the component parts, and prepares a manufacturing schedule. After
28 WPIL confirms the manufacturing schedule with the customer, the factory begins the

1 manufacturing process. Once production is complete, the factory prepares an invoice for
2 the cost of manufacturing the goods including parts, labor, and overhead, and arranges
3 shipment to the customer, usually at the customer's expense. Upon shipment, the
4 factory provides WPIL with a packing list and proof of delivery, LOL with the invoice
5 for costs, and WPIL with a corresponding version of the same. Around the same time,
6 WPIL prepares an invoice to the customer for the amount of the factory's invoice plus
7 an additional markup for overhead and profit in accordance with its contract with the
8 customer (sometimes 30%, though sometimes a different amount). LOL then prepares
9 an invoice to WPIL for the amount of the factory's invoice plus 60% of the markup to
10 the customer. LOL's invoice contains payment terms generally requiring payment
11 within 60-to-90 days, though LOL accepted payment thereafter in instances when WPIL
12 had not received timely payment from the customer and on other occasions based on the
13 parties' agreements. This course of dealing between the parties had been in place for
14 over *fifteen years* as a mechanism for WPIL and LOL to split the earnings from the
15 manufacture and sale of goods of the enterprise until LOL and its principal and related
16 entities breached that course of dealings in a variety of ways, including by instructing
17 the factory to refuse to fulfill purchase orders from WPIL and to deal directly with
18 WPIL's customers, cutting WPIL out of the business altogether. Defendant denies all
19 allegations in Paragraph 19 of the Second Amended Complaint that are inconsistent with
20 the foregoing.

21 20. In response to Paragraph 20 of the Second Amended Complaint, Defendant
22 incorporates by reference its response to Paragraph 19 of the Second Amended
23 Complaint and denies all allegations inconsistent therewith.

24 21. In response to Paragraph 21 of the Second Amended Complaint, Defendant
25 incorporates by reference its response to Paragraph 19 of the Second Amended
26 Complaint and denies all allegations inconsistent therewith.

1 22. In response to Paragraph 22 of the Second Amended Complaint, Defendant
2 incorporates by reference its response to Paragraph 19 of the Second Amended
3 Complaint and denies all allegations inconsistent therewith.

4 23. In response to Paragraph 23 of the Second Amended Complaint, Defendant
5 incorporates by reference its response to Paragraph 19 of the Second Amended
6 Complaint and adds that the parties agreed certain customers would pay LOL directly,
7 and LOL would be required to pay WPIL 40% of the agreed-upon markup. WPIL is
8 without sufficient knowledge and information to form a belief as to any payments
9 between LOL and the factory and denies any remaining allegations in Paragraph 23 of
10 the Second Amended Complaint.

11 24. In response to Paragraph 24 of the Second Amended Complaint, Defendant
12 states that in or around May 2021, LOL's principal Calvin Spencer Lee a/k/a Budiman
13 Lee ("Lee") advised WPIL that he planned to close the factory because, due to supply
14 chain issues, there was a shortage of certain manufacturing components. WPIL asked
15 that LOL keep the factory running and—without any choice in the matter given that Lee
16 otherwise would have shuttered the factory and destroyed WPIL's business—agreed to
17 Lee's demand that it pay forty percent (40%) of "labour losses," as that term was used
18 between the parties, for the duration of that shortage in order to keep the factory fully
19 operational and the staff working and paid. However, LOL still reduced the working
20 days at the factory and intermittently started and halted operations altogether as a means
21 of exerting leverage over WPIL—frequently refusing to fulfill WPIL's purchase orders
22 at all. Upon information and belief, neither LOL nor ZWEN was subjected to any
23 liability for labor or product liability claims for the reasons described in this paragraph.
24 WPIL denies any allegations that are inconsistent with the foregoing.

FIRST CAUSE OF ACTION

(Against All Defendants for Breach of Contract)

25. Defendant repeats its statements, admissions and denials for the allegations contained in Paragraphs 1 through 24 of the Second Amended Complaint, inclusive, and incorporates the same herein.

26. In response to Paragraph 26 of the Second Amended Complaint, Defendant incorporates by reference its response to Paragraph 19 of the Second Amended Complaint and denies all allegations inconsistent therewith.

27. Defendant denies the allegations in Paragraph 27 of the Second Amended Complaint.

28. Defendant denies the allegations in Paragraph 28 of the Second Amended Complaint.

29. Defendant denies the allegations in Paragraph 29 of the Second Amended Complaint.

30. In response to the allegations in Paragraph 30 of the Second Amended Complaint, Defendant states that well prior to April 5, 2022, LOL had repeatedly directed the factory to hold and to not fulfill purchase orders provided by WPIL's customers, while simultaneously threatening to shut the factory down in its entirety. LOL had also demanded, in connection with the parties' failed buyout arrangement, that WPIL transfer customer payments directly to LOL and have the Ayckbourns sign as personal guarantors on outstanding debts. Immediately before the parties' relationship, LOL also demanded that WPIL cancel its purchase orders with customers and have the customers reissue those orders directly to LOL, which would have effectively cut WPIL out of the business. In light of the foregoing, WPIL reasonably requested that LOL provide assurances that it intended to cure its prior breaches by directing the factory to fulfill purchase orders dating back to the fall of 2021—which LOL refused. Defendant denies all allegations in Paragraph 30 of the Second Amended Complaint that are inconsistent with the foregoing.

1 31. Defendant denies the allegations in Paragraph 31 of the Second Amended
2 Complaint.

3 **SECOND CAUSE OF ACTION**

4 **(Against All Defendants for Goods Sold and Delivered)**

5 32. Defendant repeats its statements, admissions and denials for the allegations
6 contained in Paragraphs 1 through 31 of the Second Amended Complaint, inclusive, and
7 incorporates the same herein.

8 33. Defendant denies the allegations in Paragraph 33 of the Second Amended
9 Complaint.

10 34. Defendant denies the allegations in Paragraph 34 of the Second Amended
11 Complaint.

12 **THIRD CAUSE OF ACTION**

13 **(Against WPIL, Gary Ayckbourn, and Mark Ayckbourn for Fraud)**

14 35. Defendant repeats its statements, admissions and denials for the allegations
15 contained in Paragraphs 1 through 34 of the Second Amended Complaint, inclusive, and
16 incorporates the same herein.

17 36. In response to Paragraph 36 of the Second Amended Complaint, Defendant
18 admits that, in or around January or February 2021, Gary Ayckbourn and Lee
19 communicated several times via Skype and through email about the purported shortage
20 of microchips and admits that, during those conversations, Lee stated that the price of
21 microchips had increased and asked Gary Ayckbourn to increase the sale prices of OEM
22 goods. Defendant denies the remaining allegations of Paragraph 36.

23 37. In response to Paragraph 37 of the Second Amended Complaint, Defendant
24 admits that, at one point, Lee suggested that the factory should work fewer days per
25 week. Defendant denies the remaining allegations of Paragraph 37.

26 38. Defendant denies the allegations in Paragraph 38 of the Second Amended
27 Complaint.

1 39. In response to Paragraph 39 of the Second Amended Complaint, Defendant
2 incorporates by reference its response to Paragraph 24 of the Second Amended
3 Complaint and denies all allegations inconsistent therewith.

4 40. In response to Paragraph 40 of the Second Amended Complaint, Defendant
5 incorporates by reference its response to Paragraph 24 of the Second Amended
6 Complaint and denies all allegations inconsistent therewith.

7 41. In response to Paragraph 41 of the Second Amended Complaint, including
8 subparagraphs (a) through (j), Defendant admits that Gary Ayckbourn and Lee
9 corresponded by email repeatedly in 2021 and 2022. Defendant states that these emails
10 speak for themselves and denies any allegations inconsistent with their contents.

11 42. In response to Paragraph 42 of the Second Amended Complaint, Defendant
12 admits that Gary and Mark Ayckbourn, in their capacities as principals of WPIL, met
13 with Lee in November 2021 and states the following. Although WPIL agreed to pay its
14 portion of the labor losses for the months where factory production was limited and was
15 able to pay, it did not do so when Lee demanded because (i) the parties contemplated
16 payment of labor expenses as part of the proposed buyout of the factory, (ii) Lee's
17 represented figures for labor costs were contradictory and unsubstantiated, (iii) Lee
18 demanded that WPIL pay for additional months of losses than the parties agreed, (iv)
19 Lee continued to threaten to halt production in November 2021 and onward despite the
20 parties' agreement, and (v) LOL had not prepared or sent any invoice for labor to WPIL.
21 WPIL denies any allegations inconsistent with the foregoing.

22 43. Defendant denies the allegations in Paragraph 43 of the Second Amended
23 Complaint.

24 44. In response to Paragraph 44 of the Second Amended Complaint, Defendant
25 admits that Mark Ayckbourn was aware of the parties' agreement regarding labor
26 expenses, incorporates its response to Paragraph 24 of the Second Amended Complaint,
27 and denies any remaining allegations.

1 45. Defendant denies the allegations in Paragraph 45 of the Second Amended
2 Complaint.

3 46. Defendant denies the allegations in Paragraph 46 of the Second Amended
4 Complaint.

5 47. Defendant is without knowledge or information sufficient to form a belief
6 as to the truth of the allegations contained in Paragraph 47 of the Second Amended
7 Complaint and therefore denies those allegations.

8 48. Defendant denies the allegations in Paragraph 48 of the Second Amended
9 Complaint.

10 **FOURTH CAUSE OF ACTION**

11 **(Against WPIL, Gary Ayckbourn, and Mark Ayckbourn for**
12 **Negligent Misrepresentation)**

13 49. Defendant repeats its statements, admissions and denials for the allegations
14 contained in Paragraphs 1 through 48 of the Second Amended Complaint, inclusive, and
15 incorporates the same herein.

16 50. Defendant denies the allegations in Paragraph 50 of the Second Amended
17 Complaint.

18 **FIFTH CAUSE OF ACTION**

19 **(Against All Defendants for Conversion)**

20 51. Defendant repeats its statements, admissions and denials for the allegations
21 contained in Paragraphs 1 through 50 of the Second Amended Complaint, inclusive, and
22 incorporates the same herein.

23 52. Because the Court has dismissed LOL's Fifth Cause of Action with
24 prejudice, no response to Paragraph 52 is required.

25 53. Because the Court has dismissed LOL's Fifth Cause of Action with
26 prejudice, no response to Paragraph 53 is required.

27 54. Because the Court has dismissed LOL's Fifth Cause of Action with
28 prejudice, no response to Paragraph 54 is required.

55. Because the Court has dismissed LOL's Fifth Cause of Action with prejudice, no response to Paragraph 55 is required.

56. Because the Court has dismissed LOL's Fifth Cause of Action with prejudice, no response to Paragraph 56 is required.

SIXTH CAUSE OF ACTION

(Against All Defendants for Breach of Fiduciary Duty)

57. Defendant repeats its statements, admissions and denials for the allegations contained in Paragraphs 1 through 56 of the Second Amended Complaint, inclusive, and incorporates the same herein.

58. Defendant denies the allegations of Paragraph 58.

59. Defendant denies the allegations of Paragraph 59.

60. Defendant denies the allegations of Paragraph 60 and responds to the allegations in its subparts as follows:

- (i) Denied;
- (ii) Denied;
- (iii) Because the Court has dismissed this allegation with prejudice, no response is required;
- (iv) Because the Court has dismissed this allegation with prejudice, no response is required;
- (v) Because the Court has dismissed this allegation with prejudice, no response is required;
- (vi) Because the Court has dismissed this allegation with prejudice, no response is required.
- (vii) Defendant admits that WPIL mistakenly and innocently represented to Lee in March 2022 that approximately \$68,000 of invoices had been paid, but mistakenly failed to process the payment through its bank, and denies any remaining allegations.

61. Defendant denies the allegations in Paragraph 61 of the Second Amended Complaint.

62. Defendant denies the allegations in Paragraph 62 of the Second Amended Complaint.

SEVENTH CAUSE OF ACTION

(Against All Defendants Violations of California Penal Code Section 496)

63. Defendant repeats its statements, admissions and denials for the allegations contained in Paragraphs 1 through 62 of the Second Amended Complaint, inclusive, and incorporates the same herein.

64. Because the Court has dismissed LOL's Seventh Cause of Action with prejudice, no response to Paragraph 64 is required.

65. Because the Court has dismissed LOL's Seventh Cause of Action with prejudice, no response to Paragraph 65 is required.

66. Because the Court has dismissed LOL's Seventh Cause of Action with prejudice, no response to Paragraph 66 is required.

EIGHTH CAUSE OF ACTION

(Against All Defendants for Imposition of a Constructive Trust)

67. Defendant repeats its statements, admissions and denials for the allegations contained in Paragraphs 1 through 66 of the Second Amended Complaint, inclusive, and incorporates the same herein.

68. Defendant denies the allegations of Paragraph 68 of the Second Amended Complaint.

69. Defendant denies the allegations of Paragraph 69 of the Second Amended Complaint.

Defendant denies any and all allegations not specifically addressed herein and denies LOL is entitled to any relief in this matter, including the relief sought in the Second Amended Complaint.

AFFIRMATIVE DEFENSES

Without assuming the burden of proof where it otherwise rests with LOL, Defendant alleges the following affirmative and other defenses:

First Affirmative Defense

LOL's Complaint, and each and every cause of action alleged therein, fails to state facts sufficient to constitute a claim for relief.

Second Affirmative Defense

LOL's claims are barred, in whole or in part, because Defendant has acted in good faith at all times.

Third Affirmative Defense

LOL has failed to take reasonable steps to reduce or minimize the damages sought to be recovered in this case.

Fourth Affirmative Defense

LOL owes money to Defendant and/or has been paid its alleged debts directly by WPIL's customers and, and as a result, any debts allegedly owed by Defendant to LOL are offset by such sums.

Fifth Affirmative Defense

LOL's claims are barred, in whole or in part, because LOL failed to comply with the terms of the parties' contract(s), implied contract(s), and/or established course of dealing.

Sixth Affirmative Defense

LOL's claims are barred, in whole or in part, because Defendant substantially complied with all material requirements of the valid, enforceable contract(s) at issue.

Seventh Affirmative Defense

Defendant alleges that LOL has suffered no losses or damages as a result of Defendant's alleged conduct, or any such losses or damages were *de minimis*.

1 Eighth Affirmative Defense

2 LOL's claims are barred, in whole or in part, under the equitable doctrines of
3 waiver, estoppel, laches, or unclean hands.

4 Ninth Affirmative Defense

5 LOL's claims are barred, in whole or in part, because LOL itself breached the
6 parties' contract(s) or committed anticipatory breach, or because LOL itself breached its
7 fiduciary duty to Defendant, or because LOL failed to bring about a condition precedent
8 to Defendant's performance, or because Defendant's performance was excused,
9 frustrated or prevented by LOL's conduct.

10 Tenth Affirmative Defense

11 To the extent Defendant was negligent, which Defendant expressly denies, LOL's
12 claims are barred in whole or in part, or LOL's recovery should be limited, under the
13 doctrines of contributory and/or comparative negligence.

14 Eleventh Affirmative Defense

15 Defendant's alleged misrepresentations were not factual in nature and are
16 therefore inactionable, or any alleged oral misrepresentations are contrary to the express
17 terms of the parties' contract(s) and/or established course of dealing.

18 Twelfth Affirmative Defense

19 LOL's claims are barred by the applicable statute of limitations.

20 Thirteenth Affirmative Defense

21 Defendant's alleged agreements were procured by coercion, duress, and/or
22 breach of fiduciary duty in that LOL knew that Defendant's business was dependent on
23 its manufacturing relationship with LOL, and thus wrongfully threatened to close the
24 factory if Defendant did not agree.

25 Fourteenth Affirmative Defense

26 Defendant's alleged agreements were procured by fraud in that LOL promised to
27 maintain the operation of the factory in exchange for Defendant's alleged agreements,
28 but upon information and belief, had no intent to keep that promise. Alternately, LOL

1 should be barred from enforcing the alleged agreements under the doctrine of
2 promissory estoppel.

3 Fifteenth Affirmative Defense

4 LOL's breach of fiduciary duty claim fails as a result of LOL's consent to and/or
5 ratification of Defendant's alleged acts.

6 Sixteenth Affirmative Defense

7 In the unlikely event that Defendant's claims are dismissed for failure to join an
8 indispensable party (though Defendant disputes the same), LOL's claims should
9 likewise be dismissed for failure to join an indispensable party.

10 Seventeenth Affirmative Defense

11 LOL's claims are barred because it has been unjustly enriched at WPIL's
12 expense by repudiating its business relationship with WPIL, representing to WPIL's
13 customers that it was no longer affiliated with WPIL, and redirecting WPIL's prior
14 contracts with customers and future business to LOL.

15 Eighteenth Affirmative Defense

16 LOL's breach of contract claims are barred because they are substantively and
17 procedurally unconscionable, as LOL has used its unilateral control over its wholly
18 owned factory to obtain inequitable bargaining power over WPIL, extract additional
19 monetary contributions, and force WPIL to consent oppressive business terms.

20 Nineteenth Affirmative Defense

21 LOL's breach of contract claims fail for lack of consideration to the extent that
22 LOL claims it is entitled to additional compensation for expenses outside the parties'
23 established course of dealing, such as labor costs.

Twentieth Affirmative Defense

Defendant reserves the right to rely upon other such affirmative defenses as may be supported by the facts, to be determined by full and complete discovery, and to voluntarily withdraw any affirmative defenses.

Dated: September 26, 2023

WARGO FRENCH SINGER LLP

By: s/ Jeff Williams

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